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# The Tale of Two MSPs

Presented by Eric Tilds, Managing Member, techGC



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# A Bit About Me

## Eric Tilds

Founder & Managing Member, techGC

- IT attorney with 25 years of experience
- Nine years as EVP, General Counsel, Chief Risk Officer, and head of Information Security and Compliance for Logicalis, Inc., a global information and communications technology service provider.
- Co-Founder of Netarx, a Cisco Gold Systems Integrator and MSP, exited to Logicalis after growing from 3 to 250 employees.



# Today's Theme

We don't often get do-overs in real life, but today at IT Nation Secure, we do!



# A Tale of Two MSPs

## Requires Cyber Insurance

- MSP 1 requires customers to carry cyber liability insurance
- MSP 2 does not
- Related topics
  - MSP insurance
  - Waivers/hold harmless agreements

## Has solid contracts with customers

- MSP 1 has solid contracts in place with its customers
- MSP 2 does not
- Topics:
  - MSAs
  - SOWs
  - BAAs

# MSP Requires Cyber Insurance

Why does it matter? Why do we care?

- Because its good for your customers



# MSP Requires Cyber Insurance

- Why does it matter?
  - Even though you can't step into their shoes, it's good for you.
    - You know your customer is serious about security
    - You help them get to a minimum insurable position
    - They can pay you in the event of an incident
    - They will be looking for pockets
    - Side note: Make sure your SOWs indicate that IR is out of scope.

# MSP Requires Cyber Insurance

- Did you help your customer with their application?
  - Were you contractually bound to do so?
    - What happens if you weren't?
    - How do you become bound to help them?
  - How exactly did you help them?
    - Your customer is responsible for the application
    - Don't lie
    - If something isn't clear, involve the broker
    - Do not help with coverages, limits, choice of insurer, etc.



# MSP Does Not Require Cyber Insurance

- Your Cyber Insurance policy will likely not cover their losses
- Can your customer survive (and pay your invoices)?
- Can you survive?



# Cyber Insurance Related Topics

- Make sure your MSP is appropriately insured
- Waivers / Hold Harmless / Indemnification agreements

# Scenario 2: Contracts

“No one cares about contracts until they have to read them months after they’re signed.”



# Scenario 2: Contracts

- Popular Fallacy: We use an MSA, therefore we are protected
- What does your MSA really say? Does it adequately protect you?
- Consider the source of your MSA
  - Google?
  - Another MSP?
  - Big law firm?
  - Insurance company?

# MSA – Limitation of Liability

## MSP 1

- Enforceable provisions
- Limits types AND amounts
- Few, if any, carveouts

## MSP 2

- May be unenforceable
- Limits types OR amounts
- Many carveouts
- The indemnification trap

# MSA – Warranty

## MSP 1

- Limited time
- Defined remedy
- Sole and Exclusive
- Disclaimers
- Separate product warranty
- Customer and mutual

## MSP 2

- No warranty statement at all
- Long time periods/no time periods
- No remedies, or offer refunds
- No disclaimer
- No product warranty
- No customer or mutual

# MSA – Indemnification

## MSP 1

- Limits to third party actions
- Clearly defined and limited obligations
- Procedure
- Sole remedy

## MSP 2

- Allow first party (customer) claims
- Too broad
- breach of contract
- acts and omissions

# MSA: Other Terms

- Solid MSAs also have:
  - Ownership language
  - Favorable Assignment terms
  - Insurance requirements
  - Confidentiality
  - Customer obligations
  - AUP
  - Encryption





# Statement of Work – Best Practices

- What do you do and how often do you do it?
- What services are not included (IR, etc.)
- What is the customer responsible for?
- Are you promising your customers anything more than your vendors are promising you?
  - Vendor EULAs

# Business Associate Agreements (BAA)

## MSP 1

- Sticks to HIPAA/HITECH terms only



## MSP 2

- Indemnification
- No liability caps
- Not tied to the underlying services agreement.

# Q&A

Thank you!

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*Don't forget to fill out your*

# SESSION SURVEY

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